

E-Filed on 3/3/09

3993 Howard Hughes Parkway, Suite 600  
Las Vegas, NV 89169-5996  
Facsimile (702) 949-8321  
Telephone (702) 949-8320

Rob Charles NV State Bar No. 006593  
Email: rcharles@lrlaw.com  
John Hinderaker AZ State Bar No. 018024  
Email: jhinderaker@lrlaw.com

Attorneys for USACM Liquidating Trust

**UNITED STATES BANKRUPTCY COURT**  
**DISTRICT OF NEVADA**

In re:

USA COMMERCIAL MORTGAGE  
COMPANY,

USA CAPITAL REALTY ADVISORS,  
LLC,<sup>1</sup>

USA CAPITAL DIVERSIFIED TRUST  
DEED FUND, LLC,

USA CAPITAL FIRST TRUST DEED  
FUND, LLC,<sup>2</sup>

USA SECURITIES, LLC,<sup>3</sup>  
Debtors.

**Affects:**

- ☐ All Debtors  
☒ USA Commercial Mortgage Company  
☐ USA Capital Realty Advisors, LLC  
☐ USA Capital Diversified Trust Deed Fund, LLC  
☐ USA Capital First Trust Deed Fund, LLC  
☐ USA Securities, LLC

Case No. BK-S-06-10725-LBR,  
Case No. BK-S-06-10726-LBR<sup>1</sup>  
Case No. BK-S-06-10727-LBR,  
Case No. BK-S-06-10728-LBR<sup>2</sup>  
Case No. BK-S-06-10729-LBR<sup>3</sup>

**CHAPTER 11**

Jointly Administered Under Case No.  
BK-S-06-10725 LBR

**DECLARATION OF EDWARD M.  
BURR IN SUPPORT OF OMNIBUS  
OBJECTIONS TO PROOFS OF  
CLAIM BASED UPON  
INVESTMENT IN DEL VALLE –  
ISLETON LOAN; AND  
CERTIFICATE OF SERVICE**

Date of Hearing: April 10, 2009

Time of Hearing: 9:30 a.m.

I, Edward M. Burr, hereby declare under penalty of perjury that:

1. I am a principal with Sierra Consulting Group, LLC (“Sierra”). Sierra is one  
of the leading providers of restructuring advisory and litigation support services in the

<sup>1</sup> This bankruptcy case was closed on September 23, 2008.

<sup>2</sup> This bankruptcy case was closed on October 12, 2007.

<sup>3</sup> This bankruptcy case was closed on December 26, 2007.

1 Southwest. Sierra is a leading national consulting firm comprised of experienced CPAs  
2 and other financial professionals.

3 2. I submit this declaration on behalf of the USACM Liquidating Trust's  
4 Objections to Proofs of Claim filed this date.

5 3. This Court approved the Official Committee of Unsecured Creditors of USA  
6 Commercial Mortgage Company's ("Committee") appointment of Sierra as financial  
7 advisers on August 11, 2006. From that date to the Effective Date of the Debtors'  
8 confirmed Plan of Reorganization, I have assisted the Committee in analyzing facts  
9 concerning these jointly administered bankruptcy cases. As of the Effective Date of the  
10 confirmed Plan of Reorganization, Sierra has been retained by the USACM Liquidating  
11 Trust to investigate and reconcile the claims against the USA Commercial Mortgage  
12 Company ("USACM") estate.

13 4. I make the following declaration based upon my personal knowledge, and  
14 upon the records of the Debtors described in this declaration, including Debtors' original  
15 and amended schedules of liabilities and the proofs of claim described herein, as well as  
16 Debtors' accounting records.

17 5. On March 12, 2007 Effective Date of the Plan, the USACM Liquidating  
18 Trust succeeded to USACM's rights with respect to books and records.

19 6. Sierra has been working closely with both the Trustee for the USACM  
20 Liquidating Trust and Development Specialist Inc. ("DSI"), the Trustee's financial  
21 advisor, in evaluating all of the claims that were filed in the USACM estate.

22 7. **Exhibit A**, attached, lists Proofs of Claim that appear to be based, in whole  
23 or in part, upon an investment in the Del Valle Homes, LLC Isleton Loan ("Del Valle –  
24 Isleton Loan"). For each claim listed, **Exhibit A** identifies the Proof of Claim number, the  
25 claimant, the claimant's address, the total amount of the claim, and the total amount of the  
26

claim that appears to be related to the Del Valle – Isleton Loan based upon the information provided by the claimant.

8. The column listing “Unremitted Principal” on **Exhibit A** represents amounts determined by Mesirow Financial Interim Management, LLC to be General Unsecured Claims held against the USACM Estate as a result of USACM collecting principal from a Borrower under a loan, but not remitting such principal to the Direct Lender. Amounts for Unremitted Principal are documented in the Third Amendment to Bankruptcy Schedule F-1 of the Schedules and Statements filed on March 20, 2007. The USACM Liquidating Trust will agree to allow the Unremitted Principal amounts as general unsecured claims. But to the extent that a proof of claim relating to Del Valle – Isleton Loan was filed for an amount greater than the amount scheduled for Unremitted Principal, the USACM Liquidating Trust will object to the difference. The amount objected to is identified on **Exhibit A** as “Approximate Amount Subject to Objection.”

9. We are advised by the loan servicer, confirmed by payment records, that on or about May 23, 2006, the Del Valle – Isleton Loan was paid in full, as reflected in USACM’s books and records. Shortly thereafter, USACM processed the payoff and distributed the proceeds to the Direct Lenders on the Del Valle – Isleton Loan.

10. Except for Unremitted Principal, the Direct Lenders were paid in full, subject to servicing fees and any other charges under their respective Loan Servicing Agreements and this Court’s orders, including the Confirmation Order. In general, the Direct Lenders received their principal and interest on the Del Valle – Isleton Loan, less unremitted principal and sums withheld for Prepaid Interest, sums known as the 2% Holdback and amounts scheduled for unremitted principal. On the Effective Date of the Plan, the Prepaid Interest was applied, a portion of the 2% Holdback was applied to the allowed claims of the Direct Lender Committee, and the balance, less unremitted principal, was paid to the Direct Lenders.

11. Accordingly, the USACM Liquidating Trust no longer has further obligations to the Direct Lenders arising out of the Del Valle – Isleton Loan to the extent that loan has been paid to the Direct Lenders, pursuant to USACM’s books and records.

Dated: March 3, 2009

/s/ Edward M. Burr

Edward M. Burr

LEWIS  
AND  
ROCA  
LLP  
LAWYERS

1 Copy of the foregoing mailed by first class  
2 Postage prepaid U.S. Mail on  
3 March 3, 2009 to:

4 All parties in interest listed on  
5 Exhibit A attached.

6 s/ Renee L. Creswell  
7 Renee L. Creswell  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26